

SEC. ____. **ENHANCED AUTHORITY TO PUNISH CONTEMPT IN MILITARY JUSTICE PROCEEDINGS.**

(a) IN GENERAL.—The text of section 848 of title 10, United States Code (article 48 of the Uniform Code of Military Justice), is amended to read as follows:

“(a) AUTHORITY TO PUNISH CONTEMPT.—A military judge detailed to any court-martial, a Court of Inquiry, the Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or military commission may punish for contempt any person who—

“(1) uses any menacing word, sign, or gesture in its presence;

“(2) disturbs its proceedings by any riot or disorder; or

“(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of same.

“(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days or a fine of \$1,000, or both.

“(c) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to acts of contempt described in section 848(a) of title 10, United States Code (article 48(a) of the Uniform Code of Military Justice), as amended by subsection (a), that are committed after the date of the enactment of this Act.

Section-by-Section Analysis

This proposal would provide a means for military judges to directly enforce their orders, and better align military courts procedurally with federal district courts, as contemplated by Article 36 of the Uniform Code of Military Justice (UCMJ). By doing so, this proposal would

enhance the ability of military judges to protect the integrity and fairness of courts-martial without unduly penalizing attorneys.

While contempt procedures are rare in the military justice system, courts-martial have occasionally used or threatened the use of contempt procedures for “direct” contempt or contempt committed in the presence or in the immediate proximity of the court-martial. Unlike their Federal (non-military) and State counterparts, military judges lack the authority under the Uniform Code of Military Justice to punish “indirect or constructive” contempt, *e.g.*, non-compliance with court orders. The current statutory approach provides only an extraordinary measure to deter violation of a military judge’s orders by a civilian attorney. Additionally, a military judge has no direct recourse against military attorneys who violate the military judge’s orders. While the military judge may ask a commander to punish judge advocates for failing to obey a military judge’s order, presently the military judge can do little to punish military or civilian attorneys who violate a military judge’s order. Attorneys practicing before courts-martial have occasionally violated military judges’ orders and the military judges have been essentially powerless to deter such conduct. At most, the concerned Judge Advocate General can suspend a civilian attorney from practicing before its service courts-martial and in its service Court of Criminal Appeals, and the Court of Appeals for the Armed Forces (CAAF) can disbar a civilian attorney from practicing before CAAF. *See* Rules for Courts-Martial 109. These are extraordinary measures, however, and are disproportionately severe in the majority of cases.

Budget Implications: This proposal would not result in any increased costs to the Department of Defense.

Unified Legislative Budget (ULB) Proposal Number: N/A

Department of Defense Priority: This proposal enhances the Department of Defense priority to Preserve and Enhance the Force, by promoting Good Order and Discipline in the Armed Forces. The authority provided by the proposal would provide for enhanced protection of the integrity and viability of the military justice system and decorum and authority of courts-martial and judicial orders.

Resubmission Justification: This proposal is being submitted for the first time.

Reviewing Legal Counsel: Mr. Robert E. Reed, Associate Deputy General Counsel (Military Justice and Personnel Policy), Office of the General Counsel, Department of Defense, (703) 695-1055-1055, reedr@osdgc.osd.mil.

Subject Matter Expert: Mr. Robert E. Reed, Associate Deputy General Counsel (Military Justice and Personnel Policy), Office of the General Counsel, Department of Defense, (703) 695-1055-1055, reedr@osdgc.osd.mil

Changes to Existing Law: This proposal would make the following changes to section 848 of title 10, United States Code:

§848. Art. 48. Contempts

~~A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of \$ 100, or both. This section does not apply to a military commission established under chapter 47A of this title.~~

(a) AUTHORITY TO PUNISH CONTEMPT.—A military judge detailed to any court-martial, a Court of Inquiry, the Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or a military commission may punish for contempt any person who—

(1) uses any menacing word, sign, or gesture in its presence;

(2) disturbs its proceedings by any riot or disorder; or

(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of same.

(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days or a fine of \$1,000, or both.

(c) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.